

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NIKKI POOSHS,
Plaintiff,
vs.
ALTRIA GROUP, INC., et al.
Defendants.

) Case No. C 04-01221-PJH-JCS
)
) **PROPOSED ORDER RE: PAGELINE
DESIGNATIONS AND OBJECTIONS [DR.
LIPOWICZ]**
)
)
)
) Judge: Honorable Phyllis J. Hamilton

The Court has reviewed the parties January 19, 2015 Joint Submission regarding the page and line designations, counter designations and objections to the deposition of Dr. Peter Lipowicz taken on Oct. 12, 13 2011; December 20, 2011; and May 17, 2012. The Courts rulings are as follows:

I. Dr. Peter Lipowicz (Oct. 12 &13, 2011, Dec. 20, 2011, May 17, 2012 Transcripts)

A. Defendants' Objections to Plaintiff's Designations

	<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
24		<i>Lipowicz, Peter 10/12/2011</i>	ii
25	10:11-16; 11:13- 12:10; 17:19- 19:22; 20:20- 21:14; 26:17-27:12	No objection	Sustained
26			
27	32:6-7; 32:10- 33:1; 33:4-16; 33:18-34:9; 34:11- 12	Post-1987; Irrelevant; Unfair prejudice; Vague	Sustained
28			

<i>Plaintiff's Designations</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
<i>Lipowicz, Peter 10/12/2011</i>		
39:14-17; 39:19-40:12; 40:14-41:7; 41:9-15	Post-1987; Irrelevant; Unfair prejudice; Cumulative	<i>Sustained</i>
41:16-19; 41:21-42:3	Post-1987; Irrelevant; Unfair prejudice; Cumulative; Argumentative	<i>Sustained</i>
42:6-9; 42:11-19	Post-1987; Irrelevant; Unfair prejudice; Cumulative	<i>Sustained</i>
45:2	No objection	
45:3-45:14	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
45:15-46:10	No objection	
46:11-46:14; 46:17-47:3	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
47:4-12	No objection	
47:13-20	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
47:21-48:2	No objection	
48:3-48:15	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
57:12-58:6	Incomplete designation; Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
58:7-58:11; 58:13-59:3; 59:5-19; 59:21-60:16; 60:18-61:13; 61:15-22	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
62:13-17, 62:20-63:19	Post-1987; Irrelevant; Unfair prejudice; Argumentative	<i>Sustained</i>
63:20-64:12	Post-1987; Irrelevant; Unfair prejudice; Implied preemption	<i>Sustained</i>
70:20-71:7; 72:7-75:9; 75:14-77:20; 77:22-78:15; 78:17-80:6; 80:8-20	No objection	
84:16-88:9	No objection	
88:13-22; 90:2-91:15; 91:17-92:7; 92:9	No objection	
92:11-99:16	No objection	
99:17-100:12	No objection	
100:13-103:1	No objection	

1	Plaintiff's Designations	Defendants' Objections	Court's Ruling
<i>Lipowicz, Peter 10/12/2011</i>			
2	103:6-104:19; 104:21-107:11	Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Irrelevant; Unfair prejudice; Hearsay	<i>Sustained</i>
3	106:9-107:11	Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Irrelevant; Unfair prejudice	<i>Sustained</i>
4	113:4-118:19	No objection	
5	119:13-120:5	No objection	
6	120:6-10, 120:12-20	Post-1987; Irrelevant; Unfair prejudice	<i>Sustained</i>
7	133:3-136:2	No objection	
8	136:3-5	Irrelevant; Unfair prejudice	<i>Sustained</i>
9	136:6-11	No objection	
10	136:12-13	Irrelevant; Unfair prejudice	<i>Sustained</i>
11	136:14-138:4; 139:2-141:13	No objection	
12	156:1-156:7; 156:9-157:7; 157:9-158:1	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm; Argumentative	<i>Sustained</i>
13	158:3-20; 158:22-159:14; 159:16-160:8; 160:10-21;	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm; Design Defect No Longer At Issue In Case; Argumentative	<i>Sustained</i>
14	165:19-22; 166:5-167:7; 167:9-170:3	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Hearsay	<i>Sustained</i>
15	170:4-171:15;	No objection	
16	171:16-172:14; 172:16-173:3; 173:5-22	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
17	174:1-14; 174:16-175:11; 176:1-15; 177:8-10	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
18	182:18-185:9	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>
19	185:10-191:18	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Hearsay	<i>Sustained</i>
20	191:19-192:8; 192:10-11	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; Post-1987	<i>Sustained</i>
21	235:2-5; 235:21-238:6; 240:11-243:10; 243:12-21	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; First Amendment (Freedom to Petition); Due Process (Right to Litigate); Attorney-Client Privilege	<i>Sustained</i>
22	243:22-247:13	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm	<i>Sustained</i>

1	Plaintiff's Designations	Defendants' Objections	Court's Ruling
<i>Lipowicz, Peter 10/12/2011</i>			
2	247:14-17	Irrelevant; Unfair prejudice; Post-1987; Unsegregated Aggregate Harm	Sustained
3	259:10-260:18	Irrelevant; Unfair prejudice; Unsegregated Aggregate Harm; First Amendment (Freedom to Petition); Due Process (Right to Litigate)	Sustained
4	260:19-264:15	Irrelevant; Unfair prejudice	Sustained
5	277:21-279:21	No objection	
6	279:22-280:16	Irrelevant; Unfair prejudice; Argumentative	Sustained
7	280:17-282:9	No objection	
8	282:10-22	Irrelevant; Unfair prejudice; Argumentative	Sustained
9	283:1-6; 283:8-22	Irrelevant; Unfair prejudice; Design Defect No Longer At Issue In Case; Argumentative	Sustained
10	284:1-285:11; 285:13-286:4	No objection	
11	286:5-8; 286:10- 287:7; 287:9-288:2	Irrelevant; Unfair prejudice; Argumentative	Sustained
12	288:3-288:11; 288:13-289:6; 289:8-290:5; 290:7-291:10; 291:12-292:8	Post-1987; Irrelevant; Unfair prejudice; Cumulative	Sustained

13	Testimony	Defendants' Objections	Court's Ruling
<i>Lipowicz, Peter 10/13/2011</i>			
14	359:8-16 [Begin with "is it correct"]	No objections	
15	384:7-386:9	Irrelevant; Unfair prejudice	OVERRULED
16	386:18-391:1	Irrelevant; Unfair prejudice; Non-Lung Cancer Conditions (Addiction)	OVERRULED
17	391:2-394:21; 395:1-6	Irrelevant; Unfair prejudice	OVERRULED
18	395:7-13	No objection	

19	Testimony	Defendants' Objections	Court's Ruling
<i>Lipowicz, Peter 5/17/2012</i>			
20	1155:25 (beginning with "Philip") - 1156:2; 1156:4-8; 1156:11- 17	Irrelevant; Unfair Prejudice; Post-1987	Sustained
21	1157:14-17	Irrelevant; Unfair Prejudice; Post-1987; Argumentative; Due Process (Right to Litigate)	Sustained
22	1160:6-7; 1160:10- 16; 1160:19- 1161:4; 1161:7-15; 1161:17-20	Irrelevant; Unfair Prejudice; Post-1987; Design Defect No Longer At Issue In Case	Sustained

	<i>Testimony</i>	<i>Defendants' Objections</i>	<i>Court's Ruling</i>
1		Lipowicz, Peter 5/17/2012	
2	1168:8-15; 1169:14-17; 1169:20-1170:6	No objection	
3	1170:7-1170:21; 1170:24-1171:4	No objection	
4			
5	1171:5-6; 1171:9-19; 1171:21-1172:2	Irrelevant; Unfair Prejudice; First Amendment (Freedom to Petition); Express preemption; Argumentative	OVERRULED
6	1172:3-8	No objection	
7	1172:9; 1172:11-17	Irrelevant; Unfair Prejudice; First Amendment (Freedom to Petition); Express preemption; Argumentative	OVERRULED
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9	1172:18-1173:14	No objection	
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B. Defendants' Counter-Designations and Plaintiff's Objections

	<i>Defendants' Counters</i>	<i>Plaintiff's Objections</i>	<i>Court's Ruling</i>
12	OCTOBER 12, 2011 DEPOSITION (VOL. 1)		
13	Errata Sheet to Oct. 12, 2011 Testimony at 115:21 (deleting "IDISA")	No objection	
14	DECEMBER 20, 2011 DEPOSITION (VOL. 4)		
15	969:12 - 972:16	No objection	
16	974:3 - 975:9	No objection	
17	980:9 - 981:18	No objection	
18	982:20 - 984:7	No objection	
19	984:9 - 984:13	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	OVERRULED
20	984:15 - 984:19	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	OVERRULED
21	984:21	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	OVERRULED
22	985:2 - 985:4	Vague, Ambiguous, Irrelevant, unfairly prejudicial (403)	OVERRULED
23	996:9-12; 996:14	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	OVERRULED
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1	Defendants' Counters	Plaintiff's Objections	Court's Ruling
2	996:18-20	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	OVERRULED
3	996:22	Lacking in foundation, vague, ambiguous, unfairly prejudicial (403)	OVERRULED
4	998:10-17	No objection	
5	1016:2-4; 1016:6-9; 1016:11-14	Design evidence, irrelevant, unfairly prejudicial (403)	OVERRULED
6	1019:13 - 1020:14	No objection	
7	1020:16 - 1020:20	No objection	
8	1023:1 - 1023:9	No objection	
9	1023:11 - 1025:9	No objection	
10	1025:12 - 1025:15	No objection	
11	1025:17 - 1026:6	No objection	
12	1026:8-9	No objection	
13	1026:10 - 1026:16	No objection	
14	1026:19 - 1027:07	No objection	
15	1090:11 - 1090:18	No objection	
16	1090:20 - 1091:4 (ending with "government")	No objection	
17	1101:10-11	No objection	

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19 IT IS SO ORDERED.
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21 Dated: January 20, 2016.
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25 PHYLIS J. HAMILTON
26 United States District Judge
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